

STATE WATER CONTROL BOARD ENFORCEMENT ACTION
A SPECIAL ORDER BY CONSENT
ISSUED TO
LADD CONVENIENCE CENTER, INCORPORATED
UST Facility at 4633 Stuarts Draft Highway, Waynesboro, VA
Facility Identification No. 6-012862

SECTION A: Purpose

This is a Special Order by consent issued under the authority of Va. Code " 62.1-44.15 (8a) and 8(d) between the State Water Control Board and Ladd Convenience Center, Inc. to resolve certain violations of the State Water Control Law and regulations at Ladd Convenience Center Underground Storage Tank facility located at 4633 Stuarts Draft Highway, Waynesboro, VA.

SECTION B: Definitions

Unless the context clearly indicates otherwise, the following words and terms have the meanings assigned to them below:

1. **ABoard@** means the State Water Control Board, a permanent citizen's board of the Commonwealth of Virginia as described in Code " 10.1-1184 and 62.1-44.7.
2. **ACode@** means the Code of Virginia (1950), as amended.
3. "Ladd" means Ladd Convenience Center, Inc., a company certified to do business in Virginia and its affiliates, partners, subsidiaries, and parents.
4. **ADepartment@** means the Department of Environmental Quality, an agency of the Commonwealth of Virginia as described in Code " 10.1-1183.

5. AUST® means underground storage tank.

6. ADirector@ means the Director of the Department of Environmental Quality.
7. AFacility@ means the retail gasoline station and USTs owned and operated by Ladd located at 4633 Stuarts Draft Highway, Waynesboro, VA. The Facility's USTs are further identified as UST ID# 1C, UST ID# 2C, UST ID# 3, UST ID# 4, UST ID# 5C, UST ID# 6C.
8. AOrder@ means this document, also known as a Consent Special Order.
9. ARegional Office@ means the Valley Regional Office of the Department.
10. AThe Regulation@ means 9 VAC 25-580-10 *et seq.* (Underground Storage Tanks: Technical Standards and Corrective Action Requirements) relating to upgrading of existing UST systems, registration of tanks, closure of non-compliant tanks, and release detection requirements.
11. "Sti-P3 tank" means a UST certified by the Steel Tank Institute to have three different methods of corrosion protection.

SECTION C: Findings of Fact and Conclusions of Law

1. The Regulation, at 9 VAC 25-580-60, required that the USTs at the Facility meet final, specific performance requirements for leak detection, spill and overfill protection, and corrosion protection by December 22, 1998.
2. Ladd is the owner of the USTs at this Facility within the meaning of Virginia Code ' 62.1-44.34:8.
3. On June 11, 1997, DEQ staff conducted an informal inspection at the Facility. The inspection revealed that release detection was not being performed on the USTs and that the DEQ had not received a notification form (7530) of the UST upgrades at the Facility.
4. On June 20, 1997, DEQ staff sent a letter to Ladd requesting that it submit a completed notification form (7530) for the UST upgrades and documentation confirming that release detection was being performed on the USTs at the Facility.
5. On November 29, 1997, Ladd completed and signed a notification form for the USTs at the Facility. This notification form is recorded as being received by the DEQ on March 27,

1998.

6. On December 10, 1997, DEQ staff sent a follow-up letter to Ladd requesting that it submit documentation that release detection was being performed on the USTs at the Facility.
7. On May 23, 2000, DEQ staff conducted a formal inspection of the Facility. The following deficiencies were noted:
 - a. Release detection was not being performed on the USTs in apparent violation of 9 VAC 25-580-140 ¶ 1.
 - b. Annual line tightness tests had not been performed in apparent violation of 9 VAC 25-580-140 ¶ 2 a.
 - c. Annual Line Leak Detector tests had not been performed in apparent violation of 9 VAC 25-580-170 ¶ 1.
 - d. The notification form submitted on November 29, 1997, incorrectly listed the USTs as fiberglass reinforced plastic. The USTs are Sti-P3. This is an apparent violation of 9 VAC 25-580-70 ¶ A.
 - e. Three USTs registered with the DEQ in 1986 were removed in November 1988. Closure documentation has not been submitted to the DEQ in apparent violation of 9 VAC 25-580 320 ¶ 1.
 - f. The cathodic protection systems on the USTs have not been tested in apparent violation of 9 VAC 25-580-90 ¶ 2. a.
 - g. Records of operation of corrosion protection equipment and compliance with release detection requirements were not being kept in apparent violation of 9 VAC 25-580-120 ¶ 2. a. & c.
8. As a result of the May 23, 2000, inspection, DEQ staff sent a Warning Letter (No. 00-07-VRO-3) to Ladd on July 18, 2000, for these apparent violations of the Regulations. The letter requested that Ladd resolve the deficiencies by July 28, 2000. A copy of the UST Facility Checklist, which detailed the alleged violations, was enclosed.

9. During an August 1, 2000, telephone conversation Ladd staff informed the DEQ that release detection was being performed on the USTs and that records of this would be kept.
10. On August 14, 2000, the DEQ received a notification form (7530) confirming that the three USTs registered with the DEQ in 1986 were removed in November 1988.
11. On August 14, 2000, the DEQ received a signed Letter of Agreement (LOA) from Ladd. In the LOA, Ladd agreed to comply with the requirements of 9 VAC –25-580-60 and 320 by October 18, 2000. Additionally, Ladd agreed to submit documentation of items needed to verify its return to compliance by October 18, 2000.
12. On September 1, 2000, DEQ staff conducted a site visit. During the site visit a notification form (7530) to correct the UST registration information was given to Ladd staff. Additionally, UST release detection records for July and September 2000 were received by the DEQ. Ladd staff agreed to schedule cathodic protection, product line, and line leak detector testing.
13. On October 27, 2000, DEQ staff received a letter from Ladd stating that they had contacted Superior Tank Services regarding the non-compliance issues at the Facility.
14. On December 18, 2000, DEQ staff contacted Ladd to inform them that the deficiencies noted in the July 18, 2000 Warning Letter had not been resolved. Ladd staff replied that they had not received test results for the product lines, cathodic protection or line leak detectors yet. DEQ staff also informed Ladd that a Notice of Violation would be issued for the continuing violations at the Facility.
15. As a result of the continuing violations of the Regulations at the Facility documented in the May 23, 2000, inspection, a Notice of Violation (No. 01-03-VRO-3) was issued to Ladd on March 27, 2001. The Notice of Violation requested that Ladd contact DEQ by April 6, 2001. A copy of the UST Facility Checklist with an addendum citing the remaining deficiencies to be resolved was attached. A draft of this Consent Special Order was also attached.
16. On April 3, 2001, DEQ staff received copies of both the product line and line leak detector tests performed by Superior Services at the Facility on October 19, 2000. All lines and leak detectors passed. Cathodic protection testing was performed and passed at the Facility on September 14, 2000.

17. On May 1, 2001, DEQ staff met with the corporate president and secretary of Ladd to discuss resolution of this matter. During the meeting, the Ladd representatives requested the opportunity to apply for an “Ability to Pay” determination from the DEQ. DEQ staff agreed to this request. Ladd officials agreed to submit release detection records on a monthly basis for the months of May through October 2001.
18. DEQ staff received passing release detection records for all six USTs at the Facility for the months of May, June, July, August and September of 2001.
19. On November 13, 2001, DEQ staff conducted another formal inspection of the Facility. During this inspection, passing release detection records for the months of October and November 2001 for all six USTs were reviewed. The following deficiencies were also noted:
 - a. Financial Assurance documentation had not been submitted to the DEQ in apparent violation of 9 VAC 25-590-150 ¶ E.
 - b. Annual line tightness tests had not been performed in apparent violation of 9 VAC 25-580-140 ¶ 2 a.
 - c. Annual Line Leak Detector tests had not been performed in apparent violation of 9 VAC 25-580-170 ¶ 1.
20. On November 26, 2001, DEQ staff mailed a copy of the formal inspection checklist and a letter detailing the deficiencies noted to Ladd.
21. On January 4, 2002, DEQ staff determined that Ladd was able to pay the civil charges sought by DEQ. Ladd was informed of this by letter dated January 4, 2002.
22. On January 21, 2002, Superior Services performed a line tightness test on the product lines and functionality tests on the line leak detectors at the Facility. All product lines and leak detectors passed. Copies of the test results were forwarded to the DEQ on February 14, 2002.

SECTION D: Agreement and Order

Accordingly, the Board, by virtue of the authority granted it in Va. Code ' ' 62.1-44.15 (8a) and

(8d), orders Ladd and Ladd agrees that:

1. To remedy the violations described above and bring the Facility into compliance with the Regulation, Ladd shall perform the actions described in Appendix A to the Order.
2. Ladd shall pay a civil charge of \$6,757.00, within 30 days of the effective date of the Order. Payment shall be by check, certified check, money order, or cashier's check payable to ATreasurer of the Commonwealth of Virginia@ and delivered to:

Receipts Control
Department of Environmental Quality
Post Office Box 10150
Richmond, Virginia 23240

3. Ladd shall also include its Federal Identification Number with the civil charge payment and shall note on the payment that it is being made pursuant to this Order.

SECTION E: Administrative Provisions

1. The Board may modify, rewrite, or amend the Order with the consent of Ladd, for good cause shown by Ladd, or on its own motion after notice and opportunity to be heard.
2. This Order addresses only those violations specifically identified herein. This Order shall not preclude the Board or Director from taking any action authorized by law, including, but not limited to: (1) taking any action regarding any additional, subsequent, or subsequently discovered violations; (2) seeking subsequent remediation of the Facility as may be authorized by law; and/or (3) taking subsequent action to enforce the terms of this Order. Nothing herein shall affect appropriate enforcement actions by other federal, state, or local regulatory authority, whether or not arising out of the same or similar facts.
3. This Order is made by agreement and with the consent of the parties and does not constitute a finding, adjudication or admission of violation of any federal, state, or local law, rule, or regulation or any allegations contained herein. For the purpose of this Order only, Ladd admits the jurisdictional allegations in the Order.
4. Ladd consents to venue in the Circuit Court of the City of Richmond for any civil action taken to enforce the terms of this Order.

5. Ladd declares it has received fair and due process under the Virginia Administrative Process Act, Code ' ' 9-6.14:1 *et seq.*, and the State Water Control Law, and it waives the right to any hearing or other administrative proceeding authorized or required by law or regulation and to judicial review of any issue of fact or law contained herein. Nothing herein shall be construed as a waiver of the right to any administrative proceeding for, or to judicial review of, any action taken by the Board to enforce this Order.
6. Failure by Ladd to comply with any of the terms of this Order shall constitute a violation of an order of the Board. Nothing herein shall act to waive or bar the initiation of appropriate enforcement actions or the issuance of additional orders as appropriate by the Board or the Director as a result of such violations. Nothing herein shall affect appropriate enforcement actions by any other federal, state, or local regulatory authority.
7. If any provision of this Order is found to be unenforceable for any reason, the remainder of the Order shall remain in full force and effect.
8. Ladd shall be responsible for failing to comply with any of the terms and conditions of this Order unless compliance is made impossible by earthquake, flood, other act of God, war, strike, or such other occurrence. Ladd must show that such circumstances resulting in noncompliance were beyond its control and not due to a lack of good faith or diligence on its part. Ladd shall notify the Director of the Regional Office in writing when circumstances are anticipated to occur, are occurring, or have occurred that may delay compliance or cause noncompliance with any requirement of this Order. Such notice shall set forth:
 - a. The reasons for the delay or noncompliance;
 - b. The projected duration of such delay or noncompliance;
 - c. The measures taken and to be taken to prevent or minimize such delay or noncompliance; and
 - d. The timetable by which such measures will be implemented and the date full compliance will be achieved.

Failure to so notify the Director of the Regional Office in writing within 10 days of learning of any condition listed above, which Ladd intends to assert will result in the impossibility of compliance, shall constitute a waiver of any claim of inability to comply with a

requirement of this Order.

9. This Order is binding on the parties hereto, their successors in interest, designees, and assigns, jointly and severally.
10. This Order shall become effective upon execution by both the Director or his designee and Ladd. Notwithstanding the foregoing, Ladd agrees to be bound by any compliance date, which precedes the effective date of this Order.
11. This Order shall continue in effect until:
 - a. Ladd petitions the Regional Director to terminate the Order after it has completed all requirements of the Order. The Director's determination that Ladd has satisfied all the requirements of the Order is a ~~case~~ decision[@] within the meaning of the Virginia Administrative Process Act; or
 - b. The Director or the Board may terminate this Order in his or its whole discretion upon 30 days written notice to Ladd.

Termination of this Order, or of any obligation imposed in this Order, shall not operate to relieve Ladd from its obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.

12. By its signature below, Ladd voluntarily agrees to the issuance of this Order.

And it is so ORDERED this ____ day of _____, 2002.

Robert G. Burnley, Director
Department of Environmental Quality

The terms and conditions of the Order are voluntarily accepted by Ladd:

Date: _____ By: _____
Cheryl A. Walters
Title: President

Commonwealth of Virginia, City/County of _____

The foregoing instrument was acknowledged before me this ____ day of _____, 2002, by

_____ of Ladd, a _____, on behalf of the corporation.
(name) (title)

Date
My commission expires:

Notary Public

Appendix A
Ladd Convenience Center
UST Facility at 4633 Stuarts Draft Highway, Waynesboro, VA

By October 31, 2002, Ladd shall:

1. Submit acceptable Financial Assurance documentation to the DEQ.